IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
Appeal No.696 of 2006
In
Court Receiver Report No.21 of 2006
In
Arbitration Petition No.336 of 2004

M/s.Ambarwadikar & Co. & ors. ... Appellants
v/s.
Ashok Leyland Finance Ltd. ... Respondents

Mr.Subodh Joshi with Mr.R.A.Mehta for appellants.

Ms.Shakuntala Joshi for respondents.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 21st November 2006

P.C. :

1. Heard the learned Counsel for the parties.

2. This Appeal challenges the order made by the Single Judge on 11th August 2006 on the Court Receiver's Report in Arbitration Petition Nos.336 and 337 of 2004. The Appeal is confined only to the aspect of security directed to be given by the appellants under the order of the learned Single Judge.

3. The question before the learned Single Judge was with respect to the security for the appellants to continue to use two excavators.

With a view to arrive at the value of the two excavators, the parties were asked to give their valuation reports. The appellants have given a report of one M/s.Telcon and M/s.Hydromatic Excavator Services. A report of one Mr.P.S. Rao from the panel of the Receiver was obtained. The learned Judge did not accept the valuation report given by the appellants on the ground that no reasons in support thereof were contained in the two reports.

4. Mr.Subodh Joshi, learned Counsel appearing for the appellants, has drawn our attention to the report given by M/s.Hydromatic Excavator Services. In the report of M/s.Hydromatic Excavator Services, it is clearly stated that the general life of machine was considered by the manufacturing Company as five years or 15000 hours. The vehicle was undoubtedly purchased way back in 1997-98 and had crossed these five years. As far as number of hours it has worked, reliance was placed on its meter which showed that the working had gone beyond 15000 hours. This was the position with respect to both excavators. These figures were not accepted because of the entry in the Telcon report which stated that the hour meter was not working. Mr.Joshi submits that obviously

it had stopped working after putting in so many hours of working. For that reason, the reading could not be discarded. He has referred to the certificates given by the Chartered Accountant who had worked out the depreciated value of the two vehicles and which comes to just around Rs.4,41,035/-. That apart, he submits that basically the dispute is about the amount of interest which the respondents are claiming.

5. Ms.Shakuntala Joshi, learned Counsel appearing for the respondents, on the other hand, submits that as per the valuation given by the Receiver's valuer, the value of the two vehicles was in the range of Rs.22 Lakhs and that was on the basis of the replacement cost. She further submits that the learned Single Judge had required the appellants to provide a security of only Rs.15 Lakhs towards each of the vehicle and the amount should not be further reduced.

6. When the matter came up earlier, we had asked Mr.Subodh Joshi as to how much according to the appellants would be the correct security and he had made the statement that the security of Rs.20 Lakhs will suffice. We had asked him to give an appropriate security and Mr.Joshi informs

that the Bank Guarantee of IDBI to the tune of Rs.20 Lakhs has already been given.

7. We have considered the submissions of both the Counsel. The submission of the appellants is that the learned Judge was wrong in saying that no reasons for decision were contained in the valuation given by the appellants. Prima facie, Mr.Subodh Joshi is right in his submission because clearly the two valuers have stated in their reports that the vehicle had crossed its life. It is also stated in the report given by M/s.Telcon that the machines of the two vehicles had been overhauled three times and four times respectively. Number of deficiencies have been pointed out such as various parts of the vehicles had to be welded, number of parts would require further overhauling and all the filters parts had to be replaced. Mr.Joshi informs that these two excavators worked for Konkan Railway in the tunnel work which has taken their toll.

8. In our view, the submissions of Mr.Subodh Joshi require acceptance. Therefore, we reduce the amount of security from Rs.15 Lakhs of each vehicle to Rs.10 Lakhs. This security has already been given by the appellants.

9. Appeal is allowed in the aforesaid terms.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)